24692

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

July 23, 2001

Beverly Cook
U.S. Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, ID 83401-1563

Re: Determination of Dispute

Dear Ms. Cook:

Please find enclosed my Memorandum Decision and Order written pursuant to paragraph 9.2(f) of the 1991 Federal Facility Agreement/Consent Order (FFA/CO). This document reflects my final determination, following consultation with EPA, of DOE's Statement of Dispute dated March 16, 2001 as regards its February 26, 2001 request to extend deadlines under the Pit 9 Record of Decision (Pit 9 ROD).

Sincerely,

C. Stephen Allred, Director
Department of Environmental Quality

Cc: Governor Dirk Kempthorne
Attorney General Alan G. Lance
Charles Findley, EPA Region 10 Acting Regional Administrator

THE STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: MARCH 16, 2001 STATEMENT OF DISPUTE THE U.S. DEPARTMENT OF ENERGY IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY, IDAHO FALLS, IDAHO	)	MEMORANDUM DECISION AND ORDER ON DISPUTE RESOLUTION

This Memorandum Decision and Order is written pursuant to paragraph 9.2(f) of the 1991 Federal Facility Agreement/Consent Order (FFA/CO). This document reflects my final determination, following consultation with EPA, of DOE's Statement of Dispute dated March 16, 2001 as regards its February 26, 2001 request to extend deadlines under the Pit 9 Record of Decision (Pit 9 ROD).

In making this determination, I recognize the need to reach timely resolution of environmental problems from historic activities at the INEEL to safeguard the Snake River Plain Aquifer and the people, environment, and economy that depend on it.

For over four months, DEQ has attempted to work in good faith with DOE to resolve this dispute. However, the information DOE has supplied during this timeframe has not demonstrated good cause for the additional schedule extension. Factors within DOE's control have fueled the schedule delays encountered since the agencies restructured the project in 1997 and form the basis for the protracted schedule it now proposes. Thus, it appears DOE is seeking relief from schedule delays largely of its own making.

During the entire course of the Pit 9 project, DOE has not honored its agreements or acted in the collaborative manner that has enabled us to achieve successful results elsewhere at the INEEL. This history and DOE's course of conduct and actions during the last 4 months lead me to conclude that continued discussions will not lead to mutually agreeable resolution of the dispute and will only further delay the project.

To date, DOE has not taken advantage of opportunities to compensate for schedule delays, and its actions have undermined its repeated verbal assurances to the State regarding the Pit 9 Project. Therefore, because of DOE's lack of accountability, I find it reasonable and necessary to require DOE to identify by October 21, 2001 the schedule and cost basis for meeting the objectives of Stage II of the Pit 9 Project to enable it to submit a draft remedial action report by April 2003. In addition, I require DOE, beginning April 1, 2002, to submit to DEQ and EPA semi-annual progress reports on its work to meet the objectives and schedules of the Pit 9 ROD. These reports must include a statement documenting whether DOE and its contractors have performed sufficient work to allow achievement of FFA/CO requirements and concisely describing any impediments to meeting the schedule and DOE's efforts to remove these impediments.

Should DOE be unable to identify how it will meet the objectives and schedules for the Pit 9 Project, DEQ will consult with EPA to enforce performance of DOE's obligations as appropriate.

History of Unfulfilled Commitments

In reaching this determination, I am mindful of the history of the Pit 9 project, DOE's repeated promises to the State of Idaho concerning buried waste in general, and DOE's current refusal to recognize its obligation to retrieve and treat buried transuranic waste located in Idaho.

As context for this decision, I feel it is relevant to set forth this history, which began in 1970 when the Atomic Energy Commission promised Governor Andrus and Senator Church that transuranic waste buried at the INEEL would be removed from the State of Idaho within the decade. During the next twenty years, nothing was done to meet this promise.

In 1991 DOE, EPA and DEQ signed the FFA/CO, which established a process for cleanup of the INEEL, including the Subsurface Disposal Area (SDA). In that same year, DOE addressed the National Academy of Sciences, proposing to conduct the Pit 9 Interim Action Demonstration Project as a means of evaluating retrieval and treatment technologies for buried TRU waste commencing in 1992. DOE advised the National Academy of Sciences that Pit 9 was selected for this technology demonstration because: 1) the waste characterization was relatively well known, 2) the Pit boundaries were relatively well known, 3) there was a relatively large spectrum of plutonium waste forms in soils, 4) there were smaller amounts of difficult to handle waste forms, and 5) the preliminary performance assessment indicated that removal would be required due to the quantity of plutonium. In 1993, DOE, EPA and the State of Idaho signed a Record of

Decision agreeing to the Pit 9 Interim Action Project with waste retrieval and treatment to be completed by 1997.

In 1995, DOE and the State of Idaho settled litigation involving DOE's analysis of the environmental impacts of INEEL activities. The settlement reaffirmed the 1991 FFA/CO and further required the removal of all transuranic waste located in Idaho by no later than 2018. Shortly after this agreement was signed, however, DOE indicated that it did not interpret the agreement to require removal of buried transuranic waste.

In 1997, after DOE missed deadlines under the Pit 9 ROD, DOE, EPA and DEQ entered into an Agreement to Resolve Disputes under the FFA/CO. The Agreement required DOE to pay $940,000 for missing deadlines and rescheduled and restructured the required activities at Pit 9. In the Agreement, DOE also reaffirmed its commitment to perform Pit 9, to demonstrate retrieval technology and to consider the results in the overall WAG 7 Remedial Investigation and Feasibility Study (RI/FS).

In that same year before the House Subcommittee on Oversight and Investigation, Secretary of Energy Peña and DOE Idaho Manager Wilcynski renewed DOE's commitments regarding buried waste at Pit 9. Mr. Wilcynski testified:

> DOE will maintain its commitment to the citizens of Idaho notwithstanding the present difficulties with LMAES and Pit 9. On May 23, 1997, Mr. Alm and I met with the Idaho Governor Phil Batt and Attorney General Al Lance. During this meeting Mr. Alm renewed the Department's commitment to the State of Idaho and EPA to fulfill its obligation under its cleanup agreement with respect to Pit 9 and the remaining 87 acres of buried waste. Since that time DOE has been working closely with the State of Idaho and EPA Region 10 to resolve current issues associated with the Pit 9 project.

Furthermore, Assistant Secretary Alm promised support of Pit 9's INEEL Buried Waste Program, including a promise to provide an additional $10 million in fiscal year 1999 to support project information needs. (It is unclear, however, to what extent DOE ultimately provided or used funds for this purpose.) In 1998, DOE again renewed its commitment to Pit 9 in a report to Congress supporting the revised approach for Pit 9 and buried waste. Under Secretary Moler testified in a Senate hearing that "DOE is most anxious to begin its cleanup of waste at Pit 9." DOE Idaho Manager Wilcynski also wrote to Governor Batt stating he would "ensure the safe remediation of buried waste to agreed schedules." Finally, in 1999 Secretary Richardson expressed to Governor Kempthorne his "unwavering commitment to the expeditious remediation of Pit 9." Accordingly, during the last 30 years, and more specifically throughout the last ten years, DOE has continually expressed its commitment to the completion of the Pit 9 Project and the removal of buried waste.

At the same time, however, disturbing evidence of bad faith has come to light. During depositions of state employees in the ongoing litigation between two Lockheed subsidiaries over the original Pit 9 contract, DEQ received documents indicating DOE was not sincere in its commitments as early as 1997. Notes from a meeting of DOE-Idaho management, held only two weeks after signing the 1997 Agreement to Resolve Disputes, indicate that DOE intended to "wait and deal with Pit 9 with the rest of the pits and trenches a few years down the road" and "would do additional characterization and testing to try to preclude retrieval." These remarks are counter to the 1997 Agreement's stated intent and accompanying commitments by Assistant Secretary Alm and the DOE-

Idaho Manager. They align conspicuously, however, with DOE's efforts in intervening years, the current status of the Pit 9 Project, DOE's request for extension, and its settlement proposals in this dispute.

Current Dispute

On February 26, 2001 DOE requested extensions of the Pit 9 Project schedule of approximately 88 to 149 months. The Pit 9 Project dates, as revised by the 1997 Agreement to Resolve Disputes, the requested extensions and the cumulative years of schedule slippage are set forth below. The significance of these documents and relationship to performance of the Pit 9 ROD are explained in footnotes 1-3.

Dates Revised Per 1997 Agreement	DOE'S Proposed Extensions
April 2003 (Draft Stage II RA Report)[1]	August 2010 (7.25 yrs.)
April 2003 (Draft Remedial Design Stage III)[2]	August 2013 (10.25 yrs.)
September 2003 (Draft Stage III RAWP & O&M Plan)[3]	February 2016 (13.25 yrs.)

DOE's based its February 26, 2001 request for extension on the asserted "difficulty of designing, constructing and operating the complex nuclear facility required

---

[1] Stage II of Pit 9 involves the excavation and retrieval of transuranic waste from a 20' x 20' area within Pit 9. DOE is required to submit a Remedial Action (RA) Report at the conclusion of this demonstration stage. This report describes how the cleanup objectives established by the Record of Decision were met. Under DOE's new proposed schedule, DOE would not begin Stage II construction until summer 2004 and would not begin actual waste removal until summer 2008. Actual waste retrieval would take nearly a year and a half based on DOE's current projections for Stage II.

[2] Stage III of Pit 9 involves the full-scale excavation and retrieval of TRU waste in Pit 9. The Stage III Remedial Design includes plans and specifications for a full-scale retrieval facility at Pit 9. Under DOE's proposed schedule, DOE will take an additional 4 years from the conclusion of the Stage II removal before submitting the Stage III Remedial Design. During this time, DOE does not propose to remove any waste.

[3] The Stage III Remedial Action Work Plan and Operation and Maintenance Plan is a document that provides a schedule for waste removal and details of cleanup field operations. DOE is proposing an additional 2.5 years to prepare this document after approval of the design. Under the extended deadline scenario, a reasonable schedule assumption is that actual waste retrieval operations for Stage III would not begin until 2018; which is roughly ten years from the conclusion of the Stage II retrieval effort.

for Stage II of OU 7-10." However, DOE identified only three "complexities and difficulties":

1. Underestimation of "safety" issues, including the need for "a hard-walled primary confinement structure with one-of-a-kind retrieval and monitoring systems...."

2. "Drastic" changes to "Data Quality Objectives" requiring "in situ characterization based on a 2 x 2 -ft. square by 6-in- thick grid over the 20 x 20-ft. excavation."

3. "The level of decision-making involvement by the agencies during weekly reviews of engineering details and trade studies...."

DEQ and EPA project managers determined each of the factors identified by DOE was either within DOE's control or mischaracterized the situation, and could not find good cause to justify the extensions requested. On March 4, 2001, DEQ and EPA denied DOE's request for extension. On March 16, 2001, DOE invoked dispute resolution under Paragraph 9.1 of the FFA/CO over DEQ and EPA's denial. On March 27, 2001, DEQ's representative on the Dispute Resolution Committee (DRC) recommended that this dispute be elevated immediately to the Senior Executive Committee (SEC). EPA and DOE's representatives concurred in this recommendation.

I met informally with DOE-Idaho managers per their request on April 4, 2001. In that meeting, Ms. Cook informed me DOE was reviewing its requirements for retrieval in the SDA to determine to what extent there was flexibility to reduce project time and cost. I in turn advised DOE that resolution of this dispute must meet the State's objective that buried transuranic waste be retrieved from the SDA, treated and removed from Idaho.

On April 17, 2001, I met with my DOE and EPA counterparts on the SEC in a formal dispute resolution meeting where I reiterated that DOE must fulfill the objectives

of the Pit 9 ROD to demonstrate retrieval and treatment so as to apply them in the remainder of WAG 7. I emphasized that the State's objective was for buried transuranic waste to be retrieved and treated. Subsequent to these meetings, DOE proposed settlements that failed to commit to the retrieval of buried transuranic waste.

DOE's May 4, 2001 settlement offer amounted to an abandonment of Pit 9 as a site for retrieval without justification, suggesting a move to a different pit to repeat the same failed history that has occurred at Pit 9. After spending over a decade evaluating the contents of Pit 9, completing a 90% design for Stage II and spending millions of tax payer dollars, DOE proposed to move to a different site and change the operating parameters from a 20' x 20' demonstration area to a 50' x 50' area without any stated benefit for the change in size and location.

The May 4 proposal also involved a design process extending though 2006 with a projected construction phase from 2007 through 2009 followed by actual operations from 2011 though 2016. The proposal further identified the need to recreate considerable design documentation that has already been completed specific to the Pit 9 Remedial Design and Remedial Action Work Plan. DOE's proposal failed to identify how this approach would meet the requirements of the Pit 9 ROD and address schedule extension issues that are the nature of the dispute.

DEQ rejected this proposal, and on June 5, I again spoke with my counterparts on the SEC via telephone conference call. I reiterated that the objectives of the Pit 9 ROD must be met so as to that buried transuranic waste in the remainder of WAG 7 could be retrieved and treated. We agreed to direct our staffs to meet on July 10-11 for the narrow

purpose of discussing differences in schedule assumptions. However, prior to a letter from DEQ and EPA representatives limiting the purpose back down to that agreed upon by the SEC, DOE issued an agenda that included revisiting the objectives of the Pit 9 ROD and discussing "radically chang[ing] the approach currently documented in the ROD." DOE's efforts to fundamentally change the agreed-upon purpose of the July 10-11 meeting are not consistent with good faith negotiations.

In addition, DOE did not fulfill commitments made to me in support of extending dispute resolution discussions. DOE did not provide basic value engineering information nor the critical review of the application of its own requirements (per my discussion with DOE management on April 4), many of which are major contributors to the "complexity" and "one-of-a-kind" features that DOE now complains are causes for schedule delays. Instead DOE informed state representatives that it would need three months to develop sufficient details and justifications to quantify what, if any, schedule acceleration and cost reductions could occur with a list of conceptual operational changes.

It is apparent DOE made no effort to meet its April 4 commitment to me. It is this lack of follow through--reneging in some cases--on commitments made by DOE during dispute resolution discussions that leads me to conclude further discussions at this level will not be productive. Based on the information DOE has provided and its actions during the course of this dispute, I conclude the schedule delays encountered since the 1997 Agreement to Resolve Disputes and proposed in DOE's request for extension are largely of DOE's own manufacture and do not form the basis of good cause.

Review of DOE's Grounds for Extension

Although DOE asserts changes in schedule assumptions as bases for its extension request, the fundamental schedule assumptions for the restructured Pit 9 project appear to have remained relatively constant since DOE developed them in 1997.

To implement the Agreement to Resolve Disputes, DOE produced two documents in October 1997 with input from DEQ and EPA: the Remedial Design/Remedial Action Scope of Work and Remedial Design Work Plan and a supporting document entitled "Planning Basis for OU7-7-10 Remedial Design/Remedial Action Contingency Scope of Work." These documents included the schedules and assumptions used to establish enforceable deadlines for deliverables for the three stages of the restructured Pit 9 project. To ensure there was a clear understanding of objectives, DOE developed a work breakdown structure that supported the schedule commitments. The schedules and assumptions gave DOE time to ensure the project design and remedial action work plan would comply with DOE's own requirements.

While the fundamental schedule assumptions have remain largely unchanged, DOE decisions in the intervening years have caused significant schedule delays and added considerable complexity to the project, exceeding the defined scope and approach identified in 1997. One example of DOE's unilateral decision-making came early in the process when DOE determined to place design activities for Stage II on hold pending the outcome of DOE's safety review panel focused on probing, a process that took an estimated 14 months. The design activities in question were not related to the issue of probing and could have moved forward pending the outcome of this safety review.

In another example, DOE met with DEQ and EPA Project Managers in January 2000 to request delays in procurement of Stage II retrieval equipment. DEQ and EPA denied the request since it lacked technical merit and would impact Pit 9 Project milestones. In May of 2000, DOE informed DEQ and EPA of its unilateral decision to postpone procurement of Stage II retrieval equipment. These and other unilateral DOE decisions have caused schedule delays of which DOE now complains.

In its extension request, DOE references "complexities and difficulties." The "complexities and difficulties" known to DEQ have either been present since schedules were developed in 1997 or are of DOE's own creation. While developing milestones in 1997, DOE assumed the facility would be a Hazard Category 2, Performance Class 3 nuclear facility to estimate the scope and complexity of the safety analysis. Many of the same "safety" issues were also raised during the earlier effort to remediate Pit 9 under the LMAES subcontract. Yet, DOE requests an extension based on Stage II construction "requirements" of a "hard-walled primary confinement structure with one-of-a-kind retrieval and monitoring systems."

The confinement and "one-of-a-kind" design features stem from design choices or from DOE's interpretation of its own requirements, which were in place at the time the schedule was established in 1997. Notably, DOE's own contractor questioned the basis for many of these determinations in August of 1999. Experience from other sites and a recent review of these requirements leads DEQ to conclude several of these requirements are not necessary and should have been waived or interpreted in a way to facilitate a more timely and cost-effective project while still allowing safe performance of the work.

DOE's second stated reason is equally uncompelling. The Pit 9 Project has, since its inception, envisioned the retrieval and separation of wastes containing 10 nanocuries per gram from a heterogeneous waste stream, with the accompanying separation of wastes containing less than this level and characterization for disposal. The 1997 schedule accounted for DOE's conservative assumptions regarding the conditions in Pit 9. In its February 26, 2001 extension request, DOE did not specify the data quality objectives (DQO's) referenced as "drastically changed." DEQ is not aware of data needs that require or limit DOE to the small meticulous, retrieval grid (2'x2"x6") proposed by DOE in the 90% design. The DQO's do not require in-situ characterization as opposed to ex-situ characterization. Whether characterization is performed in-situ or ex-situ is irrelevant to the primary data parameters necessary for separation of waste streams for treatment and disposal.

DOE, EPA and DEQ jointly identified the physical characterization data needs used to develop the schedule for Stage II during meetings held in June and August of 1997. The approach agreed upon in 1997 uses a combination of video recording of the retrieval operations, written description of drum locations within the excavation, observational assessment of breached containers and surrounding soils, and sampling of waste, soils and underburden.

DOE subsequently made design choices that added complexity to this approach. DOE did not inform DEQ and EPA that the path being pursued on the design would result in a schedule that would result in milestones being missed. Indeed, DOE supported in-situ characterization as more cost-effective and time-efficient than ex situ. In its

current request for extension, however, DOE now cites in-situ characterization as one of the primary bases for increased schedule delay and costs.

Finally, DOE's statement about agency involvement in decision-making as a ground for schedule delay is misleading. Indeed, it appears DOE and its contractor's own internal decision-making is the source of this delay. Throughout the process, DEQ and EPA have expeditiously performed their regulatory review function within the timeframes set forth in the FFA/CO. DOE delivered a Draft 90% design for Stage II on schedule. DEQ and EPA comments on the Draft 90% design were largely resolved in a November 2000 technical meeting, and the few remaining EPA and DEQ comments could be readily addressed. However, DOE has yet to resolve many of INEEL's internal design comments.

DOE's proposed schedule identifies January 2003 for submittal of a final 90% design. Based on the discussions at the July 10-11, 2001 meeting, it appears that the first 11 months contained in DOE's proposed extended schedule for "agency comment resolution," are needed to **reestablish** the INEEL design team for the project and resolve internal INEEL comments on the design. Once again, it appears DOE's voluntary and unilateral decisions to halt activities and not act to redress schedule delays is the cause of further schedule slippage. Accordingly, DEQ cannot accept DOE's internal "agency" as good cause to support schedule extension.

Furthermore, in its request for extension, DOE concluded that one of the underlying concepts in the schedule agreed to at Pit 9, parallel tasking, is inappropriate. Although DOE cited other reasons, such as "the limits of reasonable science and safe

engineering standards," at the July 10-11, 2001 meeting DOE indicated the rejection of this time-saving concept is largely because of a DOE Order put in place in October 2000. Under the FFA/CO, the agencies have traditionally agreed that applicable, relevant and appropriate requirements are determined at the time of the ROD. In this instance, DOE appears to have imposed a new requirement unilaterally without discussion with the regulators. DOE's new schedule provides for serial tasking of projects resulting in considerable protraction of the schedule.

For example, the Pit 9 project ROD set simultaneous milestones for completion of the Stage II Remedial Action Report and the Draft Stage III design. DOE's new schedule has these event occurring three years apart. The extension request provided no explanation for this change beyond the conclusion that "such a complex facility simply cannot be constructed and placed in operation within the time frame originally allotted." This conclusion is not supported and indeed is contradicted by comments by DOE's contractor to the Draft 30% design, where BBWI pointed out that certain tasks could be performed simultaneously with others to help compress schedule and cost. It appears DOE has again unilaterally chosen a course that leads to a longer schedule when other options are available to reduce the schedule while still safely performing the work. This does not constitute good cause for a schedule extension.

None of the reasons identified in DOE's Request for Extension or Statement of Dispute form the basis for good cause. After four months of discussion, it appears DOE's budget planning assumptions may be a key, if not the driving force, behind DOE's request for extension. In the July 10-11 meeting, DOE's Remediation Project

Manager indicated the protracted schedule was based in large part on DOE's assumption of limited funding scenarios. If budget assumptions are driving DOE's request for extension, DOE should discuss them fully with DEQ and EPA under the processes established by the FFA/CO to address inadequate Congressional appropriations instead of camouflaging them with other stated reasons. Doing otherwise prevents the State from ensuring its cleanup priorities are appropriately addressed.

The lack of transparency and consistency in DOE's schedule assumptions as a whole are troubling. For example, when DOE submitted the 90% Remedial Design and Remedial Action Work Plan in June 2000, it provided a timeline that exceeded the 2003 enforceable deadline for by over five years. When it submitted its request for extension 8 months later in February 2001, this date grew to over seven years.

Another problem with DOE's current request for extension is that it has disconnected the Pit 9 Interim Action Demonstration Project from the overall Remedial Investigation and Feasibility Study for the SDA (WAG 7 RI/FS). Throughout the entire history of this ten-year project, these two items have been linked. In particular, in 1997 when deadlines were missed at the Pit 9 Demonstration Project, the schedule for WAG 7 RI/FS had to be amended as part of the resolution of that dispute. On April 20, 2000, members of the WAG 7 Project Management Team reaffirmed in writing that data from Stages I and II of the Pit 9 Project are necessary to support the WAG 7 RI/FS.

However, DOE's request for extension and its settlement proposals this time around attempt to isolate issues involving the Pit 9 Project from interrelated questions about retrieval of buried waste in the SDA. The request for extension would have the

RI/FS for WAG 7 completed many years before the Pit 9 Interim Action Demonstration Project is ever constructed. Similarly, the May 4, 2001 settlement proposal by DOE made no provision to address retrieval of buried waste in the WAG 7 RI/FS. DEQ cannot accept DOE's attempt to disconnect the objectives of the Pit 9 ROD from the WAG 7 RI/FS.

Conclusions

DOE has repeatedly made and broken its commitments regarding remediation of buried waste in the Pit 9 project and in the SDA as a whole. There are indications of bad faith in prior negotiations and in the conduct of DOE as a whole at Pit 9. DOE has been unwilling or unable to redress the fundamental causes of project delay and has frustrated the State's efforts to move the project forward. Since it invoked dispute in March, DOE's settlement offers during the course of this dispute have alternatively sought to end the Pit 9 project, begin anew the cycle of delay by moving problems already encountered at Pit 9 to a new location without addressing the underlying problems, and proposed conceptual design changes without quantifying their effect on project schedule or cost.

During this timeframe, however, DOE has made no constructive attempt to address the fundamental problems with the project. It was especially disheartening that as of July 11, 2001, it would take INEEL three months to reestablish its design team and quantify schedule and cost benefits of proposed operational changes. DOE's offers of settlement provide no benefit over its original request for extension on the Pit 9 Project and appear to have greater potential for exacerbating, rather than reducing, the complexities and difficulties DOE cites as justification for this delay. Furthermore,

during the four months since it invoked dispute, DOE has not invested its resources in productively evaluating its opportunities for reducing or remedying its stated causes for delay.

Therefore, I find DOE has not demonstrated good cause in its request for extension. The stated reasons for this extension request are based on factors known to DOE or reasonably ascertainable to DOE in 1997 at the time the schedule was renegotiated, or otherwise within DOE's control. None of the project parameters has been modified such as to cause the delay of this project for an additional thirteen years. Any delays or schedule slippage is in large part due to choices made by DOE in the design phase of this project and its unilateral decisions to curtail or alter its activities. DOE's actions have contradicted its promise to expedite the performance of the Pit 9 ROD, and instead corroborate an intent to delay Pit 9 and preclude retrieval. The only resolution that is acceptable to DEQ is a continued aggressive project schedule for the Pit 9 Interim Action Project so that retrieval technology is developed and can be evaluated in the RI/FS for WAG 7.

Because DOE has failed to show good cause for schedule extension, the deadlines established under the 1997 Agreement to Resolve Disputes remain in effect. DEQ's and EPA's March 4, 2001 denial of DOE's request for extension is therefore **AFFIRMED**. DOE's February 26, 2001 request for extension is therefore **DENIED**.

ORDER

As previously indicated, DEQ also finds it reasonable and necessary to require DOE to document its ability to achieve FFA/CO requirements. DOE is therefore **ORDERED** to:

1. Identify by October 21, 2001 the schedule and cost basis that will enable DOE to meet the objectives of Stage II and submit a draft remedial action report by April 2003.
2. Beginning April 1, 2002, submitting semi-annual progress reports on its work to meet the objectives of the Pit 9 project ROD, which include a statement documenting whether DOE and its contractors have performed sufficient work to allow achievement of FFA/CO requirements and concisely describing any impediments to meeting the schedule and DOE's efforts to remove these impediments.

Should DOE be unable to identify how it will meet the objectives of Stage II within 90 days, DEQ will work with EPA to assess penalties and to enforce DOE's performance of its obligations as necessary.

DATED the 23rd of July, 2001.

C. Stephen Allred, Director
Department of Environmental Quality